

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices  
Express Mail & Priority Mail  
Express Mail & Priority Mail Contract 13

Docket No. MC2013-34

Competitive Product Prices  
Express Mail & Priority Mail Contract 13  
(MC2013-34)  
Negotiated Service Agreement

Docket No. CP2013-45

ORDER ADDING EXPRESS MAIL & PRIORITY MAIL CONTRACT 13  
TO THE COMPETITIVE PRODUCT LIST

(Issued February 4, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 13 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 13 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 23, 2013 (Request).

## II. BACKGROUND

On January 23, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Express Mail & Priority Mail Contract 13 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.<sup>2</sup> Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, a proposed change to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.<sup>3</sup>

On January 24, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>4</sup>

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<sup>2</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

<sup>3</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

<sup>4</sup> Order No. 1635, Notice and Order Concerning Addition of Express Mail & Priority Mail Contract 13 to the Competitive Product List, January 24, 2013.

### III. COMMENTS

The Public Representative filed comments on January 31, 2013.<sup>5</sup> No other interested person submitted comments.

The Public Representative states that she has reviewed the contract, the supporting justification, and the financial data and model filed under seal. PR Comments at 2. Based largely on a review of the supporting justification, she concludes that the contract should be added to the competitive product list. *Id.* at 2-3. Based on a review of the financial model, she concludes that the contract is likely to cover costs during the first year of the Agreement. *Id.* at 3.

The Public Representative notes that the Postal Service provided no data that would allow her to draw conclusions about the ability of the contract to cover costs in subsequent years. *Id.* However, she asserts that the effects of the lack of data are mitigated by terms in the contract that allow for the annual adjustment of prices and the requirement that the Postal Service file data in each year's Annual Compliance Report, which will allow the Commission to continue to monitor compliance with statutory requirements. *Id.*

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning Express Mail & Priority Mail Contract 13 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.32(d) and (e). In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the

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<sup>5</sup> Public Representative Comments on Postal Service Request to Add Express Mail & Priority Mail Contract 13 to Competitive Product List, January 31, 2013 (PR Comments).

views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Express Mail & Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Express Mail & Priority Mail Contract 13 is appropriately classified as competitive and added to the competitive product list.

*Cost considerations.* Because Express Mail & Priority Mail Contract 13 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, that the contract meets the applicable statutory and regulatory requirements. Request, Attachment D. The Commission finds that the supporting revenue and cost data are sufficient to conclude that the contract should cover its costs during its first year. The Public Representative raises concerns about the lack of data for subsequent years of the contract. PR Comments at 3. As noted by the Public Representative, however, the contract includes an annual rate adjustment provision. *Id.*; see also Request, Attachment B at 3. This provision should allow the contract's revenues to cover costs in subsequent years. Thus, the Commission finds that Express Mail & Priority Mail Contract 13 complies with the provisions applicable to rates for

competitive products. As part of its Annual Compliance Determination, the Commission will review the contract's financial performance for consistency with 39 U.S.C. § 3633(a).

*Other considerations.* Article II(A)(\*) of the contract contains a provision allowing the contract partner to send other postal products at discounted rates upon the written agreement of the parties. *Id.* at 4. If the parties agree to the shipment of such other postal products at discounted rates, the modified agreement must be filed with the Commission for review pursuant to 39 C.F.R. § 3015.5. Such a filing should clearly identify the additional products and their discounted rates and demonstrate how such rates will allow the contract to continue to meet the cost coverage requirements under 39 U.S.C. § 3633(a).

By its terms, the contract is scheduled to become effective on the first business day after the date that the Commission issues all necessary regulatory approval. *Id.* at 5. It expires 5 years from the effective date. *Id.* at 6. If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 13 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. Express Mail & Priority Mail Contract 13 (MC2013-34 and CP2013-45) is added to the competitive product list as a new product under Negotiated Service

Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

2. The Postal Service shall notify the Commission if the instant contract ends prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the Agreement.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-34 and CP2013-45. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail & Priority Mail Contract 13

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